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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,664	12/28/2001	Mark Muhlestein	112056-0022	4613
24267	7590	08/17/2007		
CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210			EXAMINER NGUYEN, THAN VINH	
			ART UNIT 2187	PAPER NUMBER
			MAIL DATE 08/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/035,664	MUHLESTEIN ET AL.	
	Examiner	Art Unit	
	Than Nguyen	2187	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11, 13-17, 20, 23 and 26-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11, 13-17, 20, 23 and 26-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/12/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/12/07 has been entered.
2. This is a response to the response, filed 6/12/07.
3. The IDS, filed 4/12/07, has been considered.
4. Claims 6-11, 13-17, 20,23, and 26-67 are pending.

Response to Amendment/Arguments

5. Applicant's arguments with respect to claims 6-11,13-17,20,23,26-67 have been considered but are moot in view of the new ground(s) of rejection. Applicant has added new limitations to the claims. The amended claims are addressed below.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 6-11,13-17,20,23,26-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. As to claims 6,13,20,23,26,27 Applicant claims storing external and internal configuration information of the virtual server. However, Applicant does not claim using any of

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these configuration data. Without using these information to provide a tangible and useful result, these information are useless and do not further limit the scope of the invention. Dependent claims 7-11,14-17 are also rejected for incorporating the error of the parent claim.

9. Claim 31,49,67 recites the limitation "security domain information in the internal configuration information". There is insufficient antecedent basis for this limitation in the claim. Applicant has not defined what the security domain information represents. Thus, the cited reference to this term lacks antecedent basis.

10. As to claim 31 applicant claims "maintaining security domain information" (line 11) but does not clearly indicate what "maintaining" encompasses. The term "maintaining" is vague and ambiguous since it has many meanings. Without knowing clearly what Applicant means from this term, one of ordinary skills would not reasonably know how to make/use the invention. Claims 49 and 67 is also rejected for the same reasons as claim 31.

11. Dependent claims 32-48,50-66 are also rejected for incorporating the error of the parent claim.

12. As to claim 49, Applicant claims a server, which is assumed to be a physical device/apparatus. However, in the body of the claim, applicant claims program software and data. Applicant does not claim any physical/tangible elements (processor, memory, devices, etc..) that make up the server. The claimed software and data cannot make up the server, as they are abstract ideas, not physical elements. The Examiner cannot determine whether Applicant is claiming an apparatus (server) or computer instructions and data.

13. As to claim 50-66, these claims refer to "a method of claim 49". Claim 49 claims a "server", not a method. Furthermore, Applicant claims "the method of claim 49" further

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comprising: “an operating system ...”. An operating system is not a step to be taken but computer software/program. Thus, it cannot be part of a method’s step.

14. Claim 66 recites the limitation “the correct authentication process” in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

15. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

16. Claims 31-67 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

17. As to claims 31-67, Applicant claims a server/method that only perform storing of data (configuration data) but does not perform functions on the data to obtain a “useful” result. Since Applicant only claims the storing of specific data/information and does not entail the transformation of this data to obtain useful results, the claimed invention fails to produce **useful, concrete, and tangible results**. Thus, the claimed invention fails to meet the requirement of 35 USC 101.

18. As to claims 49-66, Applicant is merely claim software and data, which are considered functional descriptive material. Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” In this context, “functional descriptive material” consists of data structures and computer programs which impart functionality when employed as a computer component. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally

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interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized MPEP 2106.05. Since Applicant is claiming functional descriptive material without being recorded on any computer-readable medium, the claimed invention is considered nonstatutory subject matter.

Allowable Subject Matter

19. Claims 6-11,13-17,20,23,26-67 have allowable subject matter but rejected for other reasons.

20. The prior art of record does not teach nor suggest storing external configuration information of a selected virtual server of the plurality of virtual servers in a global repository maintained on a disk of the server, the external configuration information describing external resources assigned to a virtual server, the external configuration information including units of storage and network addresses and storing internal configuration information of the selected virtual server in a private repository, the private repository stored in one or more units of storage assigned to the virtual server, the internal configuration information used to control operation of the selected virtual server, and wherein the virtual server context structure is stored in the internal configuration information.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Than Nguyen whose telephone number is 571-272-4198. The examiner can normally be reached on M-F 8-4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Sparks can be reached on (571) 272-4201. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Than Nguyen
Primary Examiner
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